IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6230 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI CHANDUBHAI RATHOD - Petitioner(s)
Versus
STATE OF GUJARAT THRO.THE SECRETARY & 2 - Respondent(s)

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Appearance :
MR AMRISH K PANDYA for Petitioner,
MR AY KOGJE AGP for Respondent : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/05/2007

ORAL JUDGMENT

In this petition, the petitioner has challenged detention order dated 5th December, 2006 passed by the Commissioner of Police, Surat City in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA").

2. The detaining authority was of the opinion that the activities of the petitioner are prejudicial to public order and that his detention is, therefore, necessary to prevent such breach. To come to such conclusion the detaining authority took into account two alleged incidents wherein, the petitioner was involved in commission of offence punishable under Sections 454, 380 read with Section 114 of the Indian Penal Code. In addition to the initiation of the said criminal cases, detaining authority also took into consideration certain statements recorded by the investigating agency. Learned AGP Shri Kogje from the material on record pointed out that on 25.11.2006 as well as on 14.12.2006 the petitioner accompanied with other persons had assaulted and threatened some people. He, therefore, submitted that in addition to being an habitual offender, the petitioner is also a person who by his acts terrorizes the entire locality. On these grounds, the detention order was sought to be sustained.

3. Learned advocate Shri Pandya for the petitioner submitted that on the strength of two isolated criminal cases which are still pending, detention of the petitioner could not have been ordered. He submitted that at the best the activities of the petitioner may be a question of law and order, the same cannot be treated as a question of problem of public order. Reliance in this regard was placed on the decisions of the Apex Court as well as this Court to which reference will be made later.

4. Having heard learned advocates appearing for the parties, I find that the order of detention cannot be sustained.

5. As noted earlier, the detaining authority has placed reliance of two incidents of alleged involvement of the petitioner in offences punishable under Sections 454, 380 read with Section 114 of Indian Penal Code. In course of the investigation, the investigating agency had also recorded statements of certain persons alleging instances wherein the petitioner and his accompanies had assaulted and threatened certain citizens.

5.1. In the case of **Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police & Ors. reported in 36 (2) GLR 1268,** the Apex Court observed that the order of detention under Section 3 of PASA may be upheld, it is necessary to establish that the person

habitually indulges in the activities mentioned in the said section. It was further observed that the expression “habit” or “habitual” has not been defined under the Act. It does not refer to the frequency of the occasions but the invariability of practice and the habit has to be proved by the totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a “dangerous person”. In the said case the detenu was involved in several cases of offences punishable under Section 307, 452 as well as Section 25 of the Arms Act. It was observed that such an instance may be relating to law and order but the activities must be such to disturb the public order.

5.2. In case of **Darpan Kumar Sharma v. State of T.N. & Anr. reported in (2003) 2 SCC 313** was pleased to set aside an order of detention based on the solitary instance of robbery without there being anything on record to show that the reach and potentiality of the incident was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. On that basis the order of detention was quashed.

5.3. Reliance was placed in the case of **Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat & Ors. reported in 2000 (1) GLH 393**, wherein the Division Bench of this Court set aside the order

of detention wherein four criminal cases filed against the petitioner of assault etc. were relied upon by the detaining authority for passing the order of detention.

6. I find that the ratio laid down by the above mentioned decisions would apply in the facts of this case, wherein the material relied upon is the involvement of the petitioner in two criminal cases. Additionally, there were statements of witnesses suggesting two instances of involvement of the petitioner in assaulting and threatening general public. Such instances cannot be categorized as so severe and having the potentiality of disturbing general peace and tranquility or create a sense of alarm and insecurity in the locality.

7. I have no hesitation in declaring the detention illegal, since I find that the authority has formed its opinion which cannot be sustained in the eye of law.

8. In the result, the petition is allowed. The order of detention, therefore fails and is hereby quashed. Rule is made absolute. No order as to costs.

9. Since the petition is allowed and the detention order is quashed, it is further directed that the detenu shall be released forthwith if there is no other detention or criminal case against him.

Direct service is permitted.

[AKIL KURESHI, J.]

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